IN THE

# Supreme Court of the United States

OCTOBER TERM, 1909

No. 160.

STANDARD OIL COMPANY OF KENTUCKY,

*Plaintiff in Error*

vs.

THE STATE OF TENNESSEE

*Defendant in Error*

## MOTION TO DISMISS OR AFFIRM

AND

## BRIEF AND ARGUMENT

CHARLES T. CULLEN, JR.

FOSTER, WEBB & PARKER PRINT, NASHVILLE.

# INDEX

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1908

## No. 391

**STANDARD OIL COMPANY OF KENTUCKY**

*Plaintiff in Error*

vs.

**THE STATE OF TENNESSEE**

EX RELATIONE, ATTORNEY GENERAL, ETC.

*Defendant in Error*

ERROR TO THE SUPREME COURT OF THE STATE OF TENNESSEE

## MOTION TO DISMISS OR AFFIRM.

Comes now the defendant in error, the State of Tennessee, by her Attorney-General, and moves the Court to dismiss the writ of error in the above entitled case for want of jurisdiction, because, no real Federal question exists or is involved in the record and judgment or decree of the Supreme Court of the State of Tennessee, sought to be reviewed by the writ of error in this cause; or, if the writ of error shall not be dismissed, that the judgment and decree of the said Supreme Court of the State of Tennessee be affirmed, on the ground that, although in the opinion of this Court

the record may show that this Court has jurisdiction, it is manifest that the said writ of error was taken for delay only, and that the question on which the jurisdiction depends is so frivolous as not to need further argument.

CHARLES T. CATES, JR.,
*Attorney-General of Tennessee.*

TO JOHN J. VERTREES, ESQ., AND W. O. VERTREES, ESQ.:

Please take notice that on the 12th day of April, 1909, a motion, of which the foregoing is a copy, will be submitted to the Supreme Court of the United States for the decision of the Court thereon. Annexed hereto is a copy of my brief or argument in support of said motion.

CHARLES T. CATES, JR.,
*Attorney-General.*

Service of notice of the foregoing motions with copy of brief or argument in support thereof, admitted this, the 12th day of March, 1909.

JOHN J. VERTREES,
WILLIAM O. VERTREES,
*Attorneys for Plaintiff in Error.*

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1908

No. 391

STANDARD OIL COMPANY OF KENTUCKY
*Plaintiff in Error*

vs.

THE STATE OF TENNESSEE
EX RELATIONE, ATTORNEY GENERAL, ETC.
*Defendant in Error*

**BRIEF AND ARGUMENT IN SUPPORT OF MOTION TO DISMISS OR AFFIRM**

## STATEMENT OF CASE.

*May it Please Your Honors*:

This cause was instituted in the Chancery Court of Sumner County, Tennessee, by a bill in equity filed in the name of the State of Tennessee, by and upon the relation of her Attorney-General, against the plaintiff in error, Standard Oil Company of Kentucky, a foreign corporation, for the purpose of having it ousted and enjoined and prohibited from doing business within the State of Tennessee, upon the ground that said corporation had violated the provisions of the *Tennessee Anti-Trust Act* (Acts of 1903, Chapter 140), which de-

nounced (Section 1) as unlawful all arrangements, contracts, agreements, trusts or combinations between persons or corporations, made with a view to lessen, or which tended to lessen full and free competition in the sale of articles imported into said State, or of domestic growth within said State, or which tended to advance, reduce or control the price or cost to the producer or the consumer of any such product or article; and which provided (Section 2), that any corporation, chartered under the laws of said State, violating the provisions of said Act, should forfeit its charter and franchise, and that every foreign corporation violating the provisions of said Act should be denied the right to do and prohibited from doing business in said State; and making it the duty of the Attorney-General to enforce said provisions by due process of law.

The Act of 1903, under which the bill in this cause was brought, is set out in full in the opinion of the Supreme Court of Tennessee (Rec., pp. 503-504; S. C., 110; S. W. Rep., 565), and for convenient reference is printed as Appendix A to this brief.

There was an original and an amended and supplemental bill, and upon the hearing the Chancellor sustained the demurrer to the amended and supplemental bill and granted the relief sought by and under the original bill and enjoined the defendant from doing intrastate business in Tennessee (Rec., p. 361), from which decree the defendant prayed and was granted an appeal to the Supreme Court of Tennessee, where, after full argument and hearing, an opinion was

handed down (Rec., pp. 499-540), directing the decree of the Chancellor to be affirmed, and thereupon a decree was duly entered, in accordance with the opinion of the Court (Rec., pp. 540-541), and the license or permit of the defendant Standard Oil Company was cancelled, and it was perpetually enjoined and restrained from doing or carrying on business within said State; but it was also expressly decreed that the Court's holding should not be construed to in any way affect or apply to the defendant's interstate commerce, or prohibit it from engaging in interstate commerce within said State.

Whereupon the defendant Standard Oil Company filed a petition to rehear, which having been overruled it sued out a writ of error and has brought the record of the Supreme Court of Tennessee into this Court to be reviewed.

## HISTORY OF THIS LITIGATION.

In view of the defenses relied upon by the defendant in the Court below, and set out in its assignment of errors accompanying its petition for writ of error—to be more specifically noticed hereinafter—we believe that a brief history of this litigation will be helpful to a proper understanding of the record, and the propositions relied upon by plaintiff in error for a reversal of the judgment or decree of the Supreme Court of Tennessee.

On September 21, 1893, the Standard Oil Company, of Kentucky, by filing with the Secretary of State of Tennessee a copy (Rec., p. 59), of its charter, acquired permission to carry on its business in Tennessee, and became (Acts of 1891, Chapter 122, Section 4, Appendix No. B), "to all intents and purposes, a domestic corporation," with the right to sue and be sued in the Courts of said State, and "subject to the jurisdiction of the Courts of this State, just as though it were created under the laws of this State."

The principal office of the Standard Oil Company in Tennessee was at Nashville, in charge of an official called a "special agent," who had general charge of all its business in Middle Tennessee, East Tennessee and parts of adjoining States.

In 1899 the Standard Oil Company had as competitors serving the oil trade in Middle Tennessee the Miller Oil Company and the Cassetty Oil Company, both

located at Nashville. The Miller Oil Company was an independent concern, having refineries of its own in Pennsylvania. The Cassetty Oil Company was also an independent concern, but, owning no refineries, secured its supplies of oil from independent dealers.

In 1899, after a season of fierce competition, the Standard Oil Company either forced out of business the Miller Oil Company, or purchased its property and plant at Nashville, and having so disposed of the Miller Oil Company, and having crippled the Cassetty Oil Company, the Standard Oil Company on October 30, 1899, entered into a written agreement with the Cassetty Oil Company (Rec., pp. 30-32), under and by which the Cassetty Company became the creature of the Standard Oil Company, and continued to exist, in so far as the business of selling refined oil was concerned, merely to keep up a show of competition with the Standard Oil Company, when in fact, the Cassetty Company for a consideration of $500 per month, practically discontinued its business of selling refined or illuminating oils, and such oils of this character as it did sell were received by it from the Standard Oil Company, and sold at prices fixed by that company. In this way the Standard Oil Company secured a practical monopoly of the business of selling oil in Middle Tennessee, and this monopoly was continued down to and beyond 1903, during the latter part of which year the acts and doings of the Standard Oil Company, now to be referred to, at Gallatin, in Sumner County, Tennessee, became the subject of investigation and prosecution under the Anti-Trust Act of 1903.

Prior to 1903—the exact time not being shown in the proof—the Standard Oil Company established storage tanks and created a local agency at Gallatin, Tenn., from which it carried on the business of a local dealer in oils, supplying the trade in Sumner County and parts of other counties adjoining, without any sort of competition. This business was under the management of one J. E. Comer, "Special Agent," whose headquarters were at Nashville—the local agent in charge at Gallatin was one O'Donnell Rutherford, and one C. E. Holt, who was styled by himself and Comer a "salesman," had charge under the general supervision of said Comer of the local agent and agencies of the Standard Oil Company, inspecting them and giving directions and instructions to them—with authority to do whatever was necessary to advance the interests of the Standard Oil Company.

In October, 1903, the Standard Oil Company had stored in its storage tanks at Gallatin 15,363 gallons of oil (Rec., pp. 213-530) of an inferior quality, which it was selling at 13½ cents per gallon, delivered from its tank wagon. Thus matters stood when, after the Standard Oil Company had been occupying this territory for years without competition, one Rosemon, a traveling salesman for the Evansville Oil Company, one of the few independent oil companies doing business in this country, had the temerity to invade the Gallatin territory, and offer for sale to certain retail dealers a superior grade of oil in competition with the oil of the Standard Oil Company, then stored in its tanks at Gallatin, and which was then being offered for sale at

that place, and Rosemon succeeded in securing from certain customers of the Standard Oil Company orders for about 60 barrels of oil, at the price of 14½ cents per gallon, to be shipped from Oil City, Pa., and delivered in original packages to said persons about November 1, 1903. Among others, Rosemon secured an order from one S. W. Love, for ten barrels of oil, another order from W. K. Lane for five barrels of oil, and still another order from J. E. Cron for ten barrels of oil, and another order from L. C. Hunter for six barrels of oil.

These facts becoming known to Special Agent Comer, at Nashville, he directed Holt to go to Gallatin, "and hold his trade" and "look after the business and countermand these orders." Pursuant to the instructions given him by his superior officer, Comer, Holt went to Gallatin, and failing to otherwise induce Lane, Love, Cron and Hunter to cancel the orders given by them to the Evansville Oil Co., Holt, with the help in some instances of the local agent, Rutherford, entered into an agreement with said parties by which, in consideration of their countermanding the orders given by each of them to said Evansville Oil Co., it was agreed that certain amounts of oil should be given to each of said persons so countermanding said orders, and such amounts so agreed to be given were in fact furnished to said persons from the oil of the Standard Oil Company, stored in tanks at Gallatin. The result of this was that the Evansville Oil Company was driven from this territory as a competitor, and soon thereafter the Standard Oil Company advanced the price of its in-

ferior grade of oil, then being sold at Gallatin, from 13½ to 14½ cents per gallon.

These facts becoming known, indictments were found by the grand jury of Sumner County against the Standard Oil Company, the said Holt and Rutherford, under the third section of the Anti-Trust Act of 1903, charging them with entering into said agreement with S. W. Love, and the others named above, for the purpose and with the view of lessening and destroying full and free competition in the sale of the Standard Oil Company's Oil at Gallatin (Rec., 241-242)). The defendants named in said indictments were arraigned thereunder, and on September 20, 1904, what was known as the "Love case" came on for trial upon the defendants' pleas of not guilty, whereupon Rutherford was acquitted by the jury, and the Standard Oil Company and Holt were found guilty, and the Standard Oil Company, was adjudged to pay a fine of $5,000, and Holt was adjudged to pay a fine of $3,000. After motions for a new trial and in arrest of judgment had been overruled, the defendants, Standard Oil Company and Holt, prayed and were granted an appeal to the Supreme Court of Tennessee, where the contention of the Standard Oil Company that a corporation was not subject to indictment under Section 3, of the Anti-Trust Act of 1903, but that the penalty provided by said Act against an offending corporation was by forfeiture of its charter, in case of a domestic corporation, or ouster from the State in case of a foreign corporation (Rec., pp. 244-246)), was sustained and the judgment against the Standard Oil Company was reversed and the indictment against it was quashed (Rec., pp. 246-248), "without prejudice to such other proceedings as may be instituted against said Standard Oil Company

to enforce the provisions of Chapter 140, of the Acts of 1903, and the particular provisions of Section 2, of said Act."

The judgment against Holt was in all things affirmed. The opinion of the Supreme Court of Tennessee, made a part of the record in this case (Rec., p. 246), is to be found officially reported under the name of *"Standard Oil Company et al. v. State,* 117 Tenn., 618."

In this case the Supreme Court of Tennessee held that the Anti-Trust Act of 1903 was valid and that it does not violate the commerce clause of the Constitution of the United States (Article 1, Section 8), because said Act was not intended to apply to interstate commerce, but was a proper and valid regulation of intrastate business or commerce. Further, the Supreme Court of Tennessee held (117 Tenn., pp. 648-654), that corporations are not indictable under Section 3 of said Act for violation of its provisions, because the words "person or persons" used in said Section 3, when properly construed, do not include corporations, and that the punishment imposed against corporations, domestic and foreign, for violation of said Act is to be found in Section 2 thereof. The judgment of the Supreme Court of Tennessee in the criminal case, 117 Tenn., p. 618) was entered (Rec., 247-8) on March 16, 1907, and thereupon on the same day, the State of Tennessee, through her Attorney-General, instituted the present proceedings by bill in the Chancery Court at Gallatin, in Sumner County, Tennessee, for the purpose, as aforesaid, of ousting the Standard Oil Company from Tennessee, and prohibiting and enjoining it from doing business in said State, under the provisions of Section 2, of the Anti-Trust Act of 1903.

## THE CASE MADE BY THE PLEADINGS IN THIS SUIT.

In view of the reference hereinbefore made to the written agreement on October 30, 1899, between the Standard Oil Company and the Cassetty Oil Company, under which the Standard Oil Company secured a monopoly of the oil business in the Middle Tennessee territory, and the third, fourth, and fifth subdivisions (Rec., p. 544) of the assignment of errors filed by the plaintiff in error with its petition for a writ or error, we deem it proper before setting out the averments of the original bill, under which the relief was granted and the final decree entered, to state that the existence of said written contract (Rec., pp. 172, 173, 153, 170), and the doings thereunder by said companies were discovered during the taking of proof under the original bill, and thereupon the State, by her Attorney-General, filed an amended and supplemental bill (Rec., pp. 23-34), predicated not only upon the acts and doings of the Standard Oil Company and its agents at Gallatin, but particularly upon the contract and agreement between it and said Cassetty Company, and the acts and doings of the parties thereunder. This contract, as above stated, was entered into on October 30, 1899, and containued in force until October 31, 1904 (Rec., p. 30), more than a year after the passage of the Anti-Trust Act of 1903. To said amended and supplemental bill the Standard Oil Company interposed a demurrer (Rec., p. 35), incorporated in its answer, and the second ground of the demurrer specially challenged said

amended and supplemental bill, upon the ground, as claimed, that when said contract between the two companies was made and entered into there was no statute in Tennessee prohibiting a foreign corporation from entering into such a contract and agreement, or which imposed a penalty of expulsion for entering into such a contract, or doing business thereunder in Tennessee. This ground of demurrer was sustained and the amended and supplemental bill dismissed, and thereupon the State excepted to the action of the Chancellor and prayed an appeal to the Supreme Court of the State and assigned error thereon to the effect that said demurrer should have been overruled, because said contract entered into on October 30, 1899, was a continuing contract, and was carried out and observed and acted on by the Standard Oil Company and the Cassetty Oil Company down to October 31, 1904, so that the acts and doings of said companies thereunder, after the enactment of said Anti-Trust Statute of 1903, were prohibited and were illegal, just as if said contract had been entered into after the passage of said Act. To sustain this proposition the State cited (Rec., pp. 446-448), among others the case of *United States v. Trans-Missouri Freight Association*, 166 U. S., pp. 290, 342; recently approved by this Court, in the case of *Waters-Pierce Oil Company v. Texas*. However, the Supreme Court in deciding this case pretermitted this question and said (Rec., 499-500): "In the view which we take of this case we need not further advert to the supplemental bill, or the action of the Chancellor thereon."

## THE ORIGINAL BILL.

The decree of the Chancellor (Rec., pp. 360-361) affirmed by the Supreme Court of Tennessee (Rec., pp. 540-541) was predicated upon the original bill which, omitting the caption, is as follows:

"Complainants respectfully show unto Your Honor:

I.

"That the defendant, Standard Oil Company, is a corporation chartered and organized under the laws of the State of Kentucky, and since 1893 has been claiming the right to do, and has been doing business in the State of Tennessee, after having filed a copy of its charter in the office of the Secretary of State of complainant, State of Tennessee, on September 21, 1893; a duly certified copy thereof is herewith filed as Exhibit A to this bill, but need not be copied in issuing process. Said defendant was, at the time of the matters hereinafter shown, and still is, doing business in Sumner County, Tenn., and has a local agent residing at, in or near the town of Gallatin, in said Sumner County."

II.

"Complainant further shows and avers that in 1903 the defendants, Standard Oil Company (for convenience hereinafter referred to as defendant

company), **was engaged in and carrying on the business in Sumner County, and in Tennessee generally, of a dealer in coal oil* and other productions of petroleum, which were and are commonly used for illuminating and other purposes, *which it sold both to retail dealers and the public generally.* The business of defendant company in the greater part of Tennessee, including Sumner County, was under the management and control of one J. E. Comer, whose headquarters or offices were at Nashville, in Davidson County, Tenn., and the local agent having in charge the business of said company at or near Gallatin, Tenn., was one O'Donnell Rutherford, and there was also employed in and about the business of defendant company one C. E. Holt, who was styled a salesman, but who had charge, under the general supervision of said Comer, of the local agents and agencies of said company, inspecting the same and giving directions and instructions thereto. The said Comer, as special or managing agent, and the said Holt, acting under him, were authorized by defendant company to do, and, in fact, did, whatever, in their judgment, was necessary to advance the interests of their employer.

"Complainant further shows that the oil for illuminating and other purposes handled, sold and dealt in within the State of Tennessee was imported and brought into said State from other States, and then stored in large iron tanks located at places where defendant company established local agencies, and from said tanks, usually called storage tanks, said oils were offered for sale and

---

*Italics herein, unless otherwise shown, are ours.

sold to retail dealers, and oftentimes to the public generally. *Defendant company had one of its storage tanks located at Gallatin, and from this tank it supplied the demand for oil in Gallatin and at other places in Sumner County.*

"Complainant further shows and avers that prior to October, 1903, defendant company had succeeded in preempting and securing for itself the oil business in Sumner County, and had succeeded in preventing other dealers in coming in competition with its said business in Sumner County, and at said time, to wit: in October, 1903, was engaged in selling in Sumner County an inferior grade of oil at the price of 13½ cents per gallon.

"Complainant further shows that thus matters stood in relation to the oil business carried on by defendant company at Gallatin, when, on or about October 5, 1903, one Claude Rosemon, an agent or traveling salesman of the Evansville Oil Company, whose chief office was at Evansville, in the State of Indiana, and which was engaged in the business of selling, among other things, illuminating oils, went to Gallatin, in Sumner County, Tenn., and *offered for sale to certain retail dealers at that place a superior grade of oil in competition with the oil of defendant company then stored in its tanks at Gallatin,* or which was being offered for sale at that place, and the said Rosemon succeeded in securing from certain customers of defendant company orders for about sixty barrels of oil at the price of 14½ cents per gallon, to be shipped from Oil City, Pa., and delivered in original packages to said persons giving said orders about November 1, 1903. Among

others, said Rosemon secured an order from one S. W. Love for ten barrels of oil; from one W. H. Lane an order for five barrels of oil; from one J. E. Cron an order for ten barrels of oil, and from one L. C. Hunter an order for six barrels of oil.

"Thereupon information having come to defendant company that said Evansville Oil Company had secured orders from and sold oil to its customers at Gallatin, as hereinafter shown, and was thereby and in that manner competing with the oil business of defendant company at Gallatin, *the said defendant company and its said agents,* J. E. Comer, C. E. Holt, and O'Donnell Rutherford, *and the said S. W. Love, W. H. Lane, J. E. Cron and L. C. Hunter,* and perhaps others unknown to complainant, *unlawfully made and entered into an arrangement, agreement and combination, with a view to lessen, and which tended to lessen, full and free competition in the sale of defendant company's oil then being sold or offered for sale at Gallatin,* and the said defendant company and its said agents, Comer, Holt and Rutherford, and the said S. W. Love, W. H. Lane, J. E. Cron, and L. C. Hunter, and perhaps others unknown to complainant, entered into and *made certain unlawful arrangements, agreements or combinations which were designed to advance, and which tended to advance, the price or cost to the purchaser or consumer of defendant company's said oil then being sold or offered for sale at Gallatin, as aforesaid.*

"And complainant further shows unto Your Honor that, in order to carry said unlawful arrangements, agreements or combinations into

effect, and as a part of such uunlawful agreements, arrangements or combinations, the said defendant company and its said agent, C. E. Holt, induced the said S. W. Love, W. H. Lane, J. E. Cron and L. C. Hunter, to rescind and cancel their several purchases of oil or orders for oil from said Evansville Oil Company, and as a consideration or inducement for said rescissions or cancellations, and as a part of said unlawful arrangements, agreements or combinations, said defendant company gave without cost or charge to the said S. W. Love, one hundred gallons of oil, and to said Lane 50 gallons of oil, to said Cron one hundred gallons of oil, and to said Hunter fifty gallons of oil, and, at its own expense, sent telegrams in the name of said Love, Lane, Cron and Hunter, to said Evansville Oil Company, cancelling the orders of said parties.

"Complainant further shows unto Your Honor that the said Love and others named above not only rescinded and cancelled, in the manner and as above shown, their several orders given the Evansville Oil Company as aforesaid, but that they refused to accept or receive said oil when the same was shipped to Gallatin. So that the said Evansville Oil Company was driven from the field as a competitor with defendant company in the oil business at Gallatin, *and thereupon defendant company, having succeeded by means of and through the aforesaid unlawful agreements, arrangements and combinations, in not only lessening, but destroying, full and free competition in the sale of its oil then stored at Gallatin, and being offered for sale there, immediately advanced the price of its oil, which was of inferior grade, as hereinbefore shown, from* 13½ *cents per gallon*

*to* 14½ *cents per gallon,* the price at which the said Evansville Oil Company had offered for sale and had sold a grade of oil far superior, as complainant is informed and believes, to the oil sold by defendant company.

"So that complainant avers and charges that the unlawful arrangements, agreements and combinations made and entered into between the defendant company and its said agents, Comer, Holt and Rutherford, and the said Love, Lane, Cron and Hunter, as hereinbefore shown, were not only made with a view of lessening full and free competition in the sale of defendant's oil at Gallatin, but that, in fact, said unlawful arrangements, agreements or combinations naturally tended to and did result in lessening and destroying full and free competition in defendant company's said oil at Gallatin, and naturally tended to and did result in advancing the price or cost of said oil to defendant's customers and the consumers of said oil in and about Gallatin, and in Sumner County, Tenn.

"Therefore, complainant charges that defendant company, a foreign corporation as aforesaid, has, in the manner hereinbefore set out, violated the provisions of Section 1, of Chapter 140, of the Acts of the General Assembly of 1903, and this bill is brought by the complainant, through her Attorney General, as aforesaid, in order that the punishment of such violations prescribed by Section 2 of said Act may be imposed upon said defendant company, to wit: that said defendant company be denied the right to do, and be prohibited from doing, business in this State.

"The premises considered, complainant prays:

"*First.*—That the said Standard Oil Company may be made a party defendant to the cause, according to the practice of this Honorable Court; that is, by due service of subpoena, and that it may be required to answer the allegations of this bill fully and truly, but its answer under oath, or the equivalent of an oath, is hereby expressly waived.

"*Second.*—For a decree enforcing the provisions of Chapter 140, of the Acts of 1903, and particularly Section 2 of said Act, against said defendant company, to the end that it be denied the right to do, and be prohibited and ousted from doing, business within this State, and to the end that such decree may be made effectual, its permit or license to do business in this State be cancelled; that the said defendant company, its officers, agents, employees and all persons acting for it, may be perpetually enjoined from doing or carrying on its business in this State.

"*Third.*—For all such interlocutory orders and decrees as may from time to time become necessary in the progress of this cause, in order to attain the ultimate relief hereinbefore prayed, including, if it shall be necessary, an order restraining *pendente lite* the defendant company from carrying on and doing business in this State.

"*Fourth.*—And if in any way complainant is mistaken in its special prayers, it prays for all such other, further and general relief as in equity it may be entitled to.

"*Fifth.*—This is the first application for an injunction or extraordinary process in this cause." Rec., pp. 1-5, 500-503.

## DEFENSES.

The Standard Oil Company interposed a demurrer (Rec., p. 10) to the original bill, challenging its sufficiency upon the ground that the terms or the provisions of the illegal agreements, arrangements or combinations, alleged to have been entered into were not set out with sufficient particularity in the bill, but this demurrer was overruled (Rec., p. 359), and thereupon the defendant duly answered (Rec., pp. 11-23) said bill, in substance, as follows:

It admitted that it was a Kentucky corporation and that, by filing a copy of its charter with the Secretary of State, it had acquired the right to do business in Tennessee, and that it had established a local business at Gallatin, in Sumner County, Tennessee, under the control of the principal office at Nashville, in charge of its special agent, J. E. Comer. It admitted, in a general way, the averments in relation to the orders secured by Rosemon, representing the Evansville Oil Company, and that Comer directed Holt to go to Gallatin and look into the matter and that Holt secured the countermand of the orders given by Love, and others, to Rosemon by giving to said Love and others certain gallons of oil, as charged in the bill, but it denied that these transactions, executed by Holt, was authorized by the company, and contended that said oil was given away by Rutherford and Holt, upon their own responsibility.

It denied that it had been guilty of any unlawful agreement within the meaning of the Tennessee Anti-Trust Act of 1903, and averred that if these acts and doings at Gallatin were unlawful, they did not violate any law of the State of Tennesseee (Rec., 17-22), but that "the acts really done by it . . . are transactions affecting and relating to interstate commerce, exclusively and wholly beyond the power or authority of the State of Tennessee to regulate, or punish, or control, and the said Act, Chapter 140, of the Acts of 1903, in so far as it assumes to do so, is void, for it is in violation of the Constitution of the United States." (Rec., pp. 17-22.)

It averred that it was a "person" within the meaning of the laws of the State of Tennessee, and particularly the Acts of 1903, Chapter 140, Section 3, and that it could be only proceeded against by indictment, and that the offense of which it had been guilty, if any, was a misdemeanor, and, therefore, it pleaded the statute of limitations of one year, prescribed by the laws of the State of Tennessee, against a prosecution for a misdemeanor.

It further averred (Rec., p. 20) that the offense charged against it in the bill is a criminal offense, and that it could only be put to answer or proceeded against by indictment or presentment, and could only be tried before a jury in a court of law and that only after such a prosecution by indictment or presentment and a verdict of guilty thereunder would the State be entitled to proceed against it by a bill in equity, under Section 2 of the Anti-Trust Act of 1903.

It denied that the Anti-Trust Act of 1903 authorized the proceeding by bill in this cause and averred that if said Act does authorize this proceeding respondent was deprived of its liberty and property without due process of law and denied the equal protection of the law (Rec., p. 22).

Under the issues thus made proof was taken and the case having been heard, the Chancellor sustained the bill and granted the relief prayed therein (Rec., pp. 360-361), *and upon appeal the Supreme Court of the State found and held that the allegations of the original bill were sustained by the proof* (Rec., pp. 529, 537, 540), *and affirmed the decree of the Chancery Court* of Sumner County, among other things, as follows:

FINAL DECREE.

> Therefore, it appearing to the Court that the allegations of the original bill are sustained by the proof, and that the defendants Standard Oil Company, and its agents Comer, Holt and Rutherford, and S. W. Love, W. H. Lane, J. C. Cron and L. C. Hunter, as alleged in said bill, unlawfully entered into an agreement and arrangement for the purpose and with the view of lessening full and free competition in the sale of defendant's oil at Gallatin, and that such unlawful agreements and arrangements tended to and resulted in lessening and destroying full and free competition in the sale of defendant's oil at Gallatin, and tended to and resulted in advancing the price of said oil to defendant's customers at Gallatin; and it further appearing that the defendant Standard Oil

Company, in entering into said unlawful arrangements and agreements violated the provisions of Section 1, of Chapter 140 of the Acts of 1903, and subjected itself to the penalty prescribed by Section 2 of said Act, applying to foreign corporations, it is accordingly so ordered, adjudged and decreed.

"And thereupon the Court doth further order, adjudge and decree that the defendant Standard Oil Company, a foreign corporation, chartered and organized under the laws of the State of Kentucky, be and hereby is denied the right to do and prohibited from doing business within this State, and its license or permit to do business within this State, issued on the 21st day of September, 1893, by the Secretary of State, be and hereby is canceled and annulled, and said defendant Standard Oil Company, its managers, agents, servants and attorneys, are hereby perpetually enjoined and restrained from doing or carrying on business within this State; but nothing herein shall be construed to in any way affect or apply to defendant's interstate commerce, or to prohibit it from engaging in interstate commerce within this State." (Rec., pp. 540-541.)

## ASSIGNMENTS OF ERROR.

The plaintiff in suing out its writ of error filed therewith the following assignments of error:

"Now comes the plaintiff in error, the Standard Oil Company (of Kentucky) and respectfully submits that in the record, proceedings, decision and final decree of the Supreme Court of Tennessee, in the above entitled matter, or case, there is manifest error in this, namely:

*First.*—The Court erred in finding and decreeing that the transactions at Gallatin, Tenn., between Holt and Rutherford, agents of this petitioner company, or either of them, and four merchants of Gallatin, Tenn., in the bill mentioned, or any of them, constituted a combination, conspiracy or agreement or understanding forbidden by the statute, which is Chapter 140 of the Acts of the General Assembly of the State of Tennessee for the year 1903.

"*Second.*—In not adjudging and decreeing that said transactions, if an offense, against, or violation of, any law, were, and are, an offense against, and violation of, the laws of the United States relating to interstate commerce, and not an offense against, or violation of, the laws of the State of Tennessee.

"*Third.*—In holding and decreeing that the contract in the pleadings mentioned between the Cassetty Oil Company and the Standard Oil Company constituted no combination, conspiracy or

agreement, forbidden by the Act passed by the General Assembly of Tennessee, which is Chapter 140 of the General Laws of Tennessee for 1903.

"*Fourth.*—In not adjudging and decreeing that the said contract between the Cassetty Oil Company and the Standard Oil Company, if it be an offense against, or violation of any law, was an offense against, and violation of, the laws of the United States relating to interstate commerce, and not an offense against, or violation of, the laws of the State of Tennessee, and particularly of the said Act, Chapter 140, hereinbefore mentioned.

"*Fifth.*—In not holding and decreeing that the said Act, Chapter 140, of the Acts or General Laws of the State of Tennessee for the year 1903, having been adjudged to relate and apply to the said transactions at Gallatin, and the contract at Nashville with the Cassetty Oil Company, is void as a regulation of interstate commerce in that it is in violation of Article 1, Section 8, subsection 3, of the Constitution of the United States.

"*Sixth.*—In adjudging and decreeing that the Act passed by the Legislature of Tennessee, known as Chapter 140 of the Acts or General Laws of 1903, and which it is decreed this petitioner, the Standard Oil Company (of Kentucky) has violated, is valid, and does not deprive it of its rights, liberty or property without due process of law, nor deny to it the equal protection of the laws.

"*Seventh.*—In not adjudging and decreeing that the said Act, Chapter 140, of the Acts of 1903, of the Legislature of Tennesse, is void, for that it is in violation of the Fourteenth Amend-

ment to the Constitution of the United States, in that it deprives the petitioner of its rights, liberty and property, without due process of law, and denies to it the equal protection of the law.

"*Eighth.*—In holding and decreeing that the transactions complained of in the bill at Gallatin, Tenn., and at Nashville, Tenn., and alleged to be illegal, constitute an offense against the laws of the State of Tennessee, and in not holding that they were transactions of interstate commerce beyond the power of the State of Tennessee to regulate, and exclusively under the power or regulation of the Congress.

"*Ninth.*—In not dismissing the bill of complaint, original and amended.

"*Tenth.*—In not holding and decreeing that the said Act, which is Chapter 140 of the General Laws of the State of Tennessee for the year 1903, deprives this defendant, the Standard Oil Company, a corporation organized under the laws of Kentucky, of its rights, liberty and property, without due process of law, and denies to it the equal protection of the law in those respects, namely:

"(*a*) It arbitrarily and capriciously denies to the defendant, a foreign corporation, the right to a trial by jury, for a violation of its provisions.

"(*b*) It arbitrarily, capriciously and unreasonably denies to corporations charged with violating its provisions the right of trial by jury, granted to natural persons, charged with violating its provisions

"(*c*) It arbitrarily, capriciously and unreasonably denies to corporations charged with violating its provisions, a trial according to the laws of the land for the trial of criminal charges whereby the defense of the statute of limitations can be pleaded and relied upon, while it grants the same to natural persons charged with violating its provisions.

"(*d*) It arbitrarily, capriciously and unreasonably denies to corporations charged with violating its provisions a trial according to the procedure prescribed by the laws of the land for the trial of criminal charges, whereby the guilt of the party charged must be established beyond a reasonable doubt in order to convict, and obliges the corporation to answer and defend in a procedure whereby it may be convicted upon a mere preponderance of the evidence, or upon less evidence than such as is required to establish guilt beyond a reasonable doubt, when it grants to natural persons charged with its violation the right to be tried according to that procedure prescribed by the laws of the land under which the accused must be proven guilty beyond a reasonable doubt, in order to convict." (Rec., pp. 543-545.)

It is obvious that this assignment of errors must have been prepared in advance of the decision of the case, and under the impression that the Supreme Court would sustain the contention of the State, that the acts and doings of the plaintiff in error and the Cassetty Oil Company at Nashville, under the contract of October 29, 1899, after the passage of the Anti-Trust Act of 1903 were illegal and violative of said Act, but

as hereinbefore shown the Court did not deem it necessary to pass upon that question and sustained the decree of the Chancellor, predicated upon the case made under the original bill; therefore, omitting those subdivisions, referring to the supposed action of the Court upon the transactions with the Cassetty Oil Company, the assignment of errors may be reduced to the following propositions:

(1) That the transactions at Gallatin, as averred in the original bill, were not forbidden by the Anti-Trust Act of 1903.

(2) That the acts and doings of plaintiff in error, and its agents at Gallatin, as averred in the bill, were transactions of interstate commerce, and, if against any law, were offenses against the Federal Anti-Trust Statute and beyond the power of the State of Tennessee to regulate or control.

(3) That the Tennessee Anti-Trust Act of 1903, as construed by the Supreme Court of Tennessee, and enforced in this case, deprives plaintiff in error of its rights, liberty and property without due process of law, and denies to it the equal protection of the law, in that:

(*a*) It denies the plaintiff in error, a foreign corporation, a trial by jury.

(*b*) It discriminates against a corporation in denying to it a trial by jury, when such right is granted to natural persons, under Section 3 of said Act.

(*c*) It denies to plaintiff in error, a corporation, the right to be tried under an indictment or presentment, as upon a criminal charge, thereby precluding plaintiff in error from pleading the statute of limitations, while granting such right to natural persons.

(*d*) It capriciously and unreasonably denies to paintiff in error, a corporation, the right to a trial according to the procedure prescribed for criminal charges, whereby the guilt of the party must be established beyond a reasonable doubt, while granting that right to natural persons charged with a violation of said Act.

Now considering the foregoing propositions or errors assigned upon the judgment of the Supreme Court of Tennesse, we respectfully submit:

*The claim to, or assertion of, a Federal question set up by plaintiff in error is frivolous and lacks all color of merit.*

Therefore—

*The writ of error should be dismissed and the judgment of the Supreme Court of Tennessee affirmed.*

*Wabash Railroad Company v. Flannagan*, 192 U. S., p. 29;
*New Orleans Waterworks Company v. Louisiana*, 185 U. S., pp. 336, 345;
*Millinger v. Hartupee*, 6 Wallace, 258;
*Hamblin v. Western Land Co.*, 147 U. S., 541;
*St. Joseph, etc., v. Steele*, 167 U. S., 659;
*Wilson v. North Carolina*, 169 U. S., p. 586.

## BRIEF AND ARGUMENT.

In support of the proposition that the assertion of a Federal question by plaintiff in error is without color or merit, we respectfully submit:

### I.

It is clear that no Federal question is involved in the first proposition or error assigned to the effect that the Supreme Court of Tennessee erred in holding that the transactions at Gallatin complained of in the bill were forbidden by the Tennessee Anti-Trust Act of 1903.

The meaning and application of a State statute is to be determined by the decision of the State Court.

*Waters-Pierce Oil Company v. Texas*, 177 U. S., 28, 42, 43;
*Leeper v. Texas*, 139 U. S., pp. 462, 467;
*Smiley v. Kansas*, 196 U. S., 447, 455.

That the State of Tennessee had the right to deal with the subject mater of the Act of 1903, and to prevent unlawful agreements and arrangements in restraint of trade, or which are designed or tend to prevent competition in the sale of commodities or products, and to prohibit and punish such unlawful agreements or contracts is no longer open to question.

*National Cotton Oil Company v. Texas*, 197 U. S., p. 115;
*Smiley v. Kansas*, 196 U. S., p. 447;
*Waters-Pierce Oil Company v. Texas* (October term, 1908).

Further, the proper construction to be given to a State statute and as to what is to be regarded as among its terms presents no Federal question, but is exclusively for the State courts to determine.

*Phoenix Insurance Company v. Gardner*, 11 Wall, 204;

*Morley v. Lake Shore etc. Company*, 146 U. S., p. 162.

The Act of 1903 has been sustained as a valid constitutional enactment by the Supreme Court of Tennessee, not only in the case at bar, but upon practically the same facts in the criminal prosecution against plaintiff in error, the decision in which is reported in—

*Standard Oil Company et al. v. State*, 117 Tenn., p. 618.

In this case the Supreme Court of the State of Tennessee, after full argument, held that "the facts are stated with substantial correctness in the original bill" (Rec., p. 529), and that "the facts make out a case against the defendant falling clearly within the authority of Holt's case (*Standard Oil Company v. State*, 117 Tenn., p. 618 (Rec., p. 537); and it has been repeatedly held that this Court does not sit to review the findings of fact made in the State Court, but accepts the findings of the State Court upon matters of fact as conclusive.

*Quimby v. Boyd*, 128, U. S., 489;

*Eagan v. Hart*, 165 U. S., p. 188;

*Dower v. Richards*, 151 U. S., p. 658;

*Thayer v. Spratt*, 189 U. S., p. 346;

*Waters-Pierce Oil Company v. Texas* (October term, 1908).

## II.

*No merit in the claim of plaintiff in error that its acts and doings at Gallatin were interstate transactions.*

This same contention was made on behalf of plaintiff in error in Holt's case (*Standard Oil Company et al. v. State*, 117 Tenn., p. 618), wherein upon practically the same facts the Supreme Court of Tennessee, held that the Anti-Trust Act of 1903 did not apply to interstate transactions or commerce, and that the transactions complained of were not interstate, but that the unlawful contracts and agreements between plaintiff in error, S. W. Love and others were made with a view to lessen and tended to lessen and destroy competition in the sale of coal oil, which the plaintiff in error had imported into the State of Tennessee, and at the time of said unlawful agreements had stored in its tanks at Gallatin, and there offered for sale. In reaching the conclusion thus stated, the Supreme Court of Tennessee, speaking through Mr. Justice Shields, among other things, said:

> "The plaintiffs in error (Standard Oil Company and Holt) assail the constitutionality of the statute on which the indictment against them is predicated. Their contention is that it applies to contracts, agreements, arrangements, trusts and combinations made in relation to the importation of articles of commerce, and therefore, to that extent, it violates that portion of Article 1, Section

8, of the Constitution of the United States, which vests in Congress the power to regulate commerce with foreign nations, among the several States, and with the Indian tribes, and is void.

"It is not insisted that it applies solely to interstate commerce, but to that equally with commerce within the State, and that the arrangement which the plaintiffs in error are alleged to have made was one relating to property to be thereafter imported into the State.

"We cannot agree to this insistence. The statute, when properly construed, does not apply to interstate commerce. The sole object and purpose of the enactment of it was to correct and prohibit abuses of trade within the State. This was the legislative intent, and will prevail over the literal meaning of words or terms found in the Act.

" 'The fundamental rule,' says Judge Cooper, speaking for this Court, in the case of *Brown v. Hamlett*, 8 Lea, p. 735, 'of construction of all instruments is that the intention shall prevail, and for this purpose the whole of the instrument will be looked to. The real intention will always prevail over the literal use of terms. Legislative acts fall within the rule, and it has been well said that a thing which is within the letter of a statute is not within the statute unless it be within the intention of the lawmakers.'

* * * * * * * *

"We are also, in arriving at the intention of the Legislature enacting a statute, to consider the Acts of Congress upon the same kindred subjects, as we would those of our General Assembly. The

Acts of Congress when within the scope of powers delegated by the States to the Federal Government, are the statute law and the higher statute law of the several States, and are enforced by their courts, in matters of which they have jurisdiction, as fully as their own statutes, without being specially pleaded or proven.

"In the case of *Commonwealth v. Gayne*, it is said:

" 'Where two Governments like those of the United States and the Commonwealth exercise their authority within the same territory and over the same citizens, the Legislature of that which as to certain subjects is subordinate, should be construed with reference to the powers and authority of the superior government, and not be deemed as invading that unless such construction is absolutely demanded.' *Com. v. Gayne*, 153 Mass., p. 205.

"It is also a familiar canon of construction of statutes that they must be so construed, if it can be done without violence to the evident intent of the Legislature, so as to avoid any conflict with the Constitution of the State or of the United States; and that every intendment, when the statute has been formally enacted, must be made in favor of its validity, and that, where it is subject to two constructions, that must be given which will sustain it, rather than that which will defeat it.

"The Legislature was cognizant we must presume that it had no power to enact laws regulating interstate commerce, and did not intend to enact

an unconstitutional law, in whole or in part. There was already then in force an Act of Congress, the Sherman Anti-Trust Act, enacted in 1890, fully covering that subject, the provisions of which were much broader and more effective than those of this Act, and could be enforced to their fullest extent by the stronger and more vigorous government. There was neither the power nor the necessity for enacting any legislation relative to interstate commerce. The wrongs to trade which were intended to be corrected and punished were those being perpetrated against commerce within the State, which Congress could not reach, and for which there was then no efficient remedy. The only statute then in force in Tennessee relative to these abuses was one making it an ordinary misdemeanor for two or more persons to conspire to commit any act injurious to public morals, trade or commerce (Code, Shannon's Ed., Sec. 6693), and that there was a necessity for a more drastic one was a matter of common knowledge and generally recognized, and the enactment of this statute was an attempt to supply it.

"We give no force to the word 'importation' appearing in Section 1, because we think it was inaccurately used in referring to articles already imported; that is, that the phrase, 'importation or sale of articles imported into this State,' was intended to include and describe, among the articles of commerce to be protected, those which had been imported from other States and countries, commingled with the common mass of property in this State, and no longer articles of interstate commerce. It is well settled that commerce in such imported articles may be regulated by State legislation. *American Steel Wire Co. v. Speed,*

110 Tenn., p. 546. It is certain that merchandise of this character was intended to be included within the provisions of this Act, otherwise commerce, in the vast amount of valuable property of foreign production and manufacture that was then and is now in this State, would be wholly unprotected from the abuses legislated against. In no other way is such property mentioned, included, or referred to in the statute, and this phrase must be held to apply to it. A large part of the wealth of the people of the State is invested in imported property, and it cannot be presumed that the Legislature intended to discriminate against it. It needed the same protection as that of domestic growth or manufacture. The Legislature clearly intended to prohibit trusts, combinations and agreements affecting all commerce not covered by the Federal statute, and upon which it had a right to legislate. It did not intend to stop short of its power or to exceed it.

"The case of *Rector of Holy Trinity Church v. United States, supra,* is much in point here. There it is said: 'It is a familiar rule that a thing may be within the letter of the statute and yet not within the statute, because not within its spirit, nor within the intention of its makers. This has been often asserted, and the reports are full of cases illustrating its application. This is not substitution of the will of the Judge for that of the legislator, for frequently words of general meaning are used in a statute, words broad enough to include an act in question, and yet a consideration of the whole legislation, or of the circumstances surrounding its enactment, or of the absurd results which follow from giving such broad meaning to the words, makes it unreasonable to believe

that the legislator intended to include the particular act.'

"And again: 'The construction invoked cannot be accepted as correct. It is a case where there was presented a definite evil, in view of which the Legislature used general terms with the purpose of reaching all phases of that evil, and therefore, unexpectedly, it is developed that the general language thus employed is broad enough to reach cases and acts which the whole history and life of the country affirm could not have been intentionally legislated against. It is the duty of the Courts, under those circumstances, to say that, however broad the language of the statute may be, the act, although within the letter, is not within the intention of the Legislature, and therefore cannot be within the statute.'

"But if the act did prohibit the abuses legislated against in the importation of articles in this State, such provision does not vitiate the entire statute; it is constitutional and valid, so far as it affects commerce in articles which have been imported into the State and become commingled with the common mass of property of the State and subject to its laws, as articles of domestic production and manufacture.

"It is evident, from what we have already said, that the prevention of unlawful contracts in relation to the importation of articles was not the inducement of the enactment of this statute, but that the primary and chief purpose of the Legislature, beyond all question, was to protect commerce within the State. Its provisions upon this

subject are to no extent and in no manner dependent upon one protecting the importation of merchandise from other States and countries. They are complete and capable of effective enforcement, without one in relation to interstate commerce. Such statutes, notwithstanding they contain clauses regulating interstate commerce, a matter not within the power of the States, have frequently been sustained and enforced by this Court and the Supreme Court of the United States, so far as they relate to commerce within the State. *State v. Scott*, 98 Tenn., 254; *Austin v. State*, 101 Tenn., 579; *Kidd v. Pearson*, 128 U. S., 1; *Plumley v. Massachusetts*, 155 U. S., 461.

"The plaintiffs in error (Standard Oil Company and Holt), are also mistaken in their conception of the charge made in the indictment, and of the object and effect of the evidence introduced to prove it. *The express averments of both counts of the indictment are that the defendants therein named conspired, contracted, and agreed with S. W. Love for the purpose and with a view to lessen and destroy full and free competition in the sale of a certain article of sale, coal oil, imported into this State; and the proof introduced by the State upon the trial was for the purpose of proving an agreement to lessen and destroy competition in the sale of coal oil which had, previous to the agreement, been imported into the State, and was then stored and upon sale at Gallatin.* There is no averment that the agreement was made with a view to lessen, or intended to lessen and destroy, competition in the sale of coal oil to be imported by the Evansville Oil Company, and no proof was offered to that effect.

*"The charge upon which the plaintiffs in error* (Standard Oil Company and Holt) *were indicted, tried, and convicted, is the alleged making of an unlawful contract and agreement with S. W. Love to lessen and destroy competition in the sale of coal oil which the Standard Oil Company had imported into this State, and had, at the time of the agreement, stored in its storage tanks at Gallatin, and there offered for sale. The charge is that the agreement was made to protect oil already imported, and not oil to be imported. The evidence offered tended to prove an agreement conceived and effected by the Standard Oil Company and its agents to protect the oil of the principal then stored in Gallatin, from competition with that about to be imported and offered for sale by a competitor, and not to protect that of the Evansville Oil Company yet to be transported there.*

"A combination affecting interstate commerce is none the less a violation of the Federal anti-trust statute and punishable under it, where the agreement made incidentally affects intrastate commerce; and the same rule will apply to combinations made in violation of the statute of the State upon the same subject, where interstate commerce is incidentally affected. If it were otherwise, neither the Federal nor the State laws could be enforced in any case.

"The importation of oil to be made by the Evansville Oil Company was only the occasion, the incentive, of the conspiracy charged in relation to that theretofore imported by the Standard Oil Company.

"It is true the oil of the Standard Oil Company

had been an article of interstate commerce, but it was not when the agreement with S. W. Love was made. It was then at rest in this State, and was subject to its revenue laws and the police power of the State. That it was subject to the revenue laws is conceded by the Standard Oil Company, and it had taken out a license and paid the revenue required and imposed by the laws of the State. That it was in its then condition subject to the police power of the State cannot be doubted. *Am. Steel & Wire Co. v. Speed,* 110 Tenn., p. 546; *Brown v. Houston,* 114 U. S., p. 622; *Pittsburg Etc., Co. v. Bates,* 156 U. S., p. 577."

117 Tenn., pp. 641-648.

This holding was approved and reaffirmed by the Supreme Court of the State of Tennessee, in the case at bar (Rec., pp. 524, 527).

It is to be borne in mind in considering the contention of plaintiff in error, that its acts and doings at Gallatin were interstate transactions, that although it is a Kentucky corporation, nevertheless it has become to all intents and purposes a domestic dealer in oils in Tennessee—having its principal office at Nashville, and a local agency at Gallatin, where it maintained large storage tanks containing more than 15,000 gallons of oil, for purposes of sale and distribution at Gallatin. And it was in respect of this oil stored at Gallatin that the bill averred the unlawful agreements and arrangements were entered into by plaintiff in error, its agents and Love and others, "with a view to lessen, and which tended to lessen, full and free competition in the sale of defendant company's oil, then being sold or offered for sale at Gallatin." (Rec., 2-3, 500, 501.)

In addition to quoting and reaffirming the opinion in Holt's case, as set out above, the Supreme Court of Tennessee further said:

> "A tendency of the agreements and arrangements above refered to, and we think the inevitable purpose, under a fair deduction from the evidence, was to lessen competition with the defendant's business at Gallatin in respect of the oil it had on storage there, and was offering for sale. It is immaterial that it would have the like effect upon oil which might thereafter be imported into Gallatin by the defendant, and poured into its storage tanks at that place. It is likewise immaterial that nothing was said between Love, Lane, Cron and Hunter on the one side, and Holt and Rutherford on the other, as to the purpose of the several arrangements entered into, or the tendency thereof. It appears from the testimony clearly of Love, Lane and Cron that they well knew what the purpose was, and the inevitable tendency. That Holt knew it, goes without saying, since he went to Gallatin for the express purpose of endeavoring to suppress competition by shutting out the oil of the Evansville Oil Company. The inevitable tendency was to stifle competition as to the fifteen thousand gallons of oil then in storage tanks, as well as all the oil that might thereafter stand at rest in those tanks. Likewise it is true, in a broader sense, that the purpose and tendency of these arrangements was to protect the defendant's local business at Gallatin." (Rec., p. 538.)

Therefore, we respectfully submit that the Act itself having been held to apply solely to interstate

commerce and the transactions complained of being unquestionably intrastate transactions, there is no color of merit—no real, substantial claim—in the contention made on behalf of the plaintiff in error, that it is protected, and the State precluded, by the interstate commere clause of the Federal Constitution.

III.

*There is no merit in the claim that the Tennessee Anti-Trust Act of* 1903 *deprives the plaintiff in error of its rights, liberty and property without due process of law, and denies to it the equal protection of the law.*

In considering this question it will be helpful to note the course of legislation in Tennessee in relation to the terms upon which foreign corporations are authorized to do business in that State, as well as the several statutes denouncing as illegal agreements in restraint of trade, and the statutory provisions prescribing methods of procedure against corporations committing offenses amounting to a surrender or forfeiture of their rights and franchises as corporations.

The first statute (Acts of 1877, Chapter 31) requiring a foreign corporation to file a copy of its charter in the office of the Secretary of State as a condition precedent to its right to carry on business in said State was limited to mining or manufacturing companies; but in 1891 by chapter 122 of the Acts of that year (Appendix No. B), the Act of 1877 was amended so as to include and apply to all foreign cor-

porations that may desire to own property or do business in this State. This Act merely required a foreign corporation to file in the office of the Secretary of State a copy of its charter, and cause an abstract thereof to be recorded in the office of the Register of each county, in which it desired or proposed to carry on its business, and, thereupon, without the issuance of any formal permit or license, it was entitled to carry on its business in Tennessee, and it became to all intents and purposes (Acts of 1891, chapter 122, sec. 4), a domestic corporation, with authority to sue and be sued in the courts of said State, and *subject to the jurisdiction of the courts of said State, just as though it were created under the laws of said State.*

This Act of 1891 was the statute in force in Tennessee when, on September 21, 1893, the plaintiff in error filed a certified copy of its charter with the Secretary of State, the effect of which was, not to make a contract with plaintiff in error (Rec., p. 523), but to grant it a mere revocable license or permit and to make plaintiff in error subject to the jurisdiction of the courts of Tennessee, in the same manner as though it were a Tennessee corporation.

In 1889, by chapter 250 of the Acts of 1899, the Legislature of Tennessee passed an Act (Appendix No. C), making it unlawful for any person or persons or association of persons, or any corporation in this State, *or doing business in this State,* to enter into any agreement or arrangement, the effect of which was to destroy or limit competition, and by section 2 of said

Act it was provided that any person or *corporation* violating the provisions of said Act should pay a fine of not less than $250.00 for the first offense, and for the second offense a fine of not less than $500.00, thereby including foreign as well as domestic corporations under the provisions of this section. By section 4 of said Act it was provided that *any corporation created or incorporated by or under the laws of this State, violating the provisions of said Act should forfeit its corporate rights and franchises,* and it was made the duty of the Attorney-General of the State to institute proceedings for the forfeiture of such rights and franchises. *By this Act a foreign corporation offending against the statute was subject only to a fine, while a domestic corporation forfeited its corporate rights and franchises.*

In 1897, by chapter 94 of the Acts of 1897, the Legislature passed an Act declaring unlawful and void all agreements in restraint of trade, which was practically identical with the Anti-Trust Act of 1903, involved in this case, except that the fourth section of the Act of 1897 contained an exception in favor of agricultural products or live stock, similar to the Illinois statute disapproved by this Court in the case of *Union Sewer Pipe Co. v. Connolly,* 185 U. S., p. 554. By the Act of 1897 *foreign corporations offending against its provisions were placed upon the same footing with domestic corporations,* in that it was by section 2 of said Act, provided:

> "That any corporation holding a charter under the laws of this State, which shall violate any of the provisions of this Act shall thereby forfeit its charter and franchise, and its corporate existence shall cease and determine. Every foreign corporation violating any of the provisions of this Act is hereby denied the right and prohibited from doing any business within this State, and it shall be the duty of the Attorney-General to enforce these provisions by injunction or other proper proceedings in any county in which such foreign corporation does business, by due process of law."

The right of *quo warranto* has never been in force in Tennessee (*State v. Turk*, M. and Y., 297, 293; *Attorney-General v. Leaf*, 9 Humph., Rec., p. 517), but in 1845 (Acts of 1845-46, chapter 55) the Legislature provided a special statutory method of proceeding against corporations usurping franchises or committing acts amounting to a surrender or forfeiture of their rights and privileges as corporations.

This Act of 1845 was subsequently codified and is found in Shannon's Code, embracing sections 5165 to 5187, inclusive. Without setting out in detail these Code provisions (found in the opinion of the Supreme Court of Tennessee, on page 518 of the Record), it is sufficient to say that they provide for a suit to be brought by bill in equity in either the Circuit or Chancery Court, to be conducted as other suits in equity, and, provided *for such issues of fact as may become necessary to trial by jury in the progress of the case to be made up under direction of the Court and submitted to a jury.*

Thus was provided a complete remedy, by bill in equity to be conducted according to the recognized practice in courts of equity, against corporations violating the law which was sustained as "due process of law" by the Supreme Court of Tennessee in the case of *State ex rel. v. Schlitz Brewing Company*, 104 Tenn., p. 715, which was a suit instituted by bill in equity upon the relation of the Attorney-General to enforce the provisions of the Anti-Trust Act of 1897, against the Schlitz Brewing Company. In this case the Act of 1897 was sustained as valid and constitutional, but after this Court, in the case of *Union Sewer Pipe Co. v. Connolly, supra*, had declared the Illinois statute void on account of the exception contained therein in favor of agricultural products, the Legislature of Tennessee passed the Act of 1903, chapter 140, which is practically identical, as above stated, with the Act of 1897, save that the exception in favor of agricultural products, etc., was omitted.

In the Schlitz Brewing Co. case, *supra*, practically the same assault was made upon the Act of 1897, as was made in this case upon the Act of 1903, but it was therein held that the second section of the Act of 1897 —similar in all respects to the second section of the Act of 1903—provided a remedy by bill in equity—a civil suit—against a corporation offending against the provisions of said Act. This procedure has been recognized and followed in many cases by the Tennessee courts, cited in the opinion in this case on page 519 of the Record. That such proceeding was the one to be

applied to corporations was the contention of plaintiff in error when it was indicted in what is known in this record as Holt's case (117 Tenn., p. 618), as shown by the opinion in that case, and the brief of its learned counsel, partly incorporated in the record in this case at pages 244-246.

In the Schlitz Brewing Company case, *supra* (104 Tenn.), it was also contended that, before a corporation could be proceeded against by bill in equity there should be an antecedent conviction at law (104 Tenn., pp. 746-751), but the Supreme Court of Tennessee held that such course was not necessary, but that a bill in equity might be filed at once, and in this case the Supreme Court of Tennessee, speaking through Mr. Justice Neil, after reviewing exhaustively (Rec., pp. 510-521) the question of procedure at common law, against corporations violating the law, affirmed the holding of the Schlitz Brewing Co.'s case, and held that section 2 of the Anti-Trust Act of 1903 contemplated and provided a purely civil procedure against a corporation to forfeit its charter or oust it from the State, and that the judgment in such proceeding was a civil judgment, according to the practice of courts of equity, and not a criminal sentence. (Rec., p. 520.)

Having thus shown the method of procedure against offending corporations, according to the well established practice of courts of equity, wherein the alleged offender has full opportunity to be heard upon all its defenses in the same and as full a manner as other persons or corporations sued in such courts, *and*

*the right to have any issue of fact submitted to a jury,* we now proceed to notice the grounds upon which plaintiff in error contends that it is deprived of its property by due process of law and denied the equal protection of the law.

*As to Right of Trial by Jury.*

*First, It complains that it, a foreign corporation, is denied the right to a trial by jury.*

This proposition ignores the Tennessee statute giving the right to have any issue of fact submitted to a jury—which right plaintiff in error did not invoke, but assuming that plaintiff in error means a trial by jury, where a general verdict might be rendered, we ask:

Is there a semblance of a federal question in this claim?

Upon what ground can it be contended that a foreign corporation, doing business in a State, merely by courtesy and comity, and placed upon the same footing with domestic corporations, is entitled to a trial by jury?

It seems too clear for argument, or the citation of authority, that a federal question is not involved in this claim, made on behalf of plaintiff in error.

Certainly it can claim no right to a trial by jury under any of the first ten amendments to the Federal Constitution, which were not intended to restrict the

powers of the State, but to operate solely on the Federal Government.

*Brown v. N. J.*, p. 175, U. S., p. 174.
*Barrington v. Missouri*, 285 U. S., p. 483.
*Spies v. Illinois*, 123 U. S., p. 131.
*Jack v. Kansas*, 199 U. S., 372, 380.

Nor are the "safeguards" of personal rights, which are enumerated in the first eight articles of amendment to the Federal Constitution, sometimes called "the Federal Bill of Rights," among the privileges and immunities of citizens of the United States, within the meaning of the fourteenth amendment to the Federal Constitution.

Twining's case, 211 U. S., p. 78.

The right to a trial by jury is not one of the fundamental rights inherent in national citizenship.

In the case of *Walker v. Sauvinet*, 92 U. S., pp. 90-92, this Court, speaking through Mr. Chief Justice Waite, held that the trial by jury in suits at common law pending in the State courts is not a privilege or immunity of national citizenship, which the States are forbidden by the fourteenth amendment of the Constitution of the United States to abridge.

In *Hurtado v. California*, 110 U. S., p. 516, this Court, speaking through Mr. Justice Matthews, reviewed exhaustively the question of juries at common law—and particularly of grand juries—and held that the fourteenth amendment to the Federal Constitution

does not require an indictment or presentment by a grand jury in a prosecution by a State for murder—that a proceeding by information or such other mode as the State might see fit to adopt, wherein the defendant might have a fair and impartial hearing would be "due process of law."

In *Missouri v. Lewis*, 101 U. S., pp. 22, 31, this Court said:

> "The fourteenth amendment to the Federal Constitution does not secure to all persons in the United States the benefit of the same laws and the same remedies. Great diversities in these respects may exist in two States, separated only by an imaginary line. On one side of this line there may be a right to trial by a jury, and on the other side no such right. Each State prescribes its own method of judicial procedure."

In *Maxwell v. Dow*, 176 U. S., the decision in *Hurtado v. California, supra*, was reaffirmed, and it was held that the trial of a person accused of a crime tried by a jury of eight persons instead of twelve, as provided by the laws of the State of Utah, and his subsequent imprisonment after conviction by such a jury, did not deprive him of his liberty, without due process of law. In this case, Mr. Justice Peckham, speaking for the Court, among other things, said:

> The States, so far as this amendment (the fourteenth) is concerned, are left to regulate trials in their own courts in their own way. A trial by jury in suits at common law pending in

the State courts is not, therefore, a privilege or immunity of national citizenship, which the States are forbidden by the fourteenth amendment to abridge. A State cannot deprive a person of his property without due process of law; but this does not necessarily imply that all trials in the State courts affecting the property of persons must be by jury. This requirement of the Constitution is met if the trial is had, according to the settled course of judicial proceedings. *Murray's Lessee v. Hoboken Land and Improvement Co.*, 18 How., pp. 279, 280. Due process of law is process due according to the law of the land. This process in the States is regulated by the law of the State. Our power over that law is only to determine whether it is in conflict with the supreme law of the land—that is to say, with the Constitution and laws of the United States made in pursuance thereof—or with any treaty made under the authority of the United States.

"This case shows that the fourteenth amendment in forbidding a State to abridge the privileges or immunities of citizens of the United States, does not include among them the right of trial by jury in a civil case, in a State court, although the right to such a trial in the Federal courts is specially secured to all persons in the cases mentioned in the seventh amendment." 176 U. S., 595.

Therefore, we submit that the complaint that plaintiff in error was deprived of a trial by jury is without color of merit as a federal question.

*As to Due Process and Denial of the Equal Protection of the Law.*

It is next claimed by plaintiff in error that it is deprived of due process of law and denied the equal protection of the law, in that it was not put to trial under an indictment as upon a criminal charge and that, in this way, it was arbitrarily discriminated against by being denied a trial by jury, and the right to plead the statute of limitations, applicable to criminal charges, under the statutes of Tennessee, and forced to submit to a conviction upon preponderance of testimony rather than have its guilt established beyond a reasonable doubt—all of which rights—it claims, were granted to natural persons under section 3 of said Act.

Replying to this contention we first point out that the holding of the Supreme Court of Tennessee that this proceeding, authorized by section 2 of the Act of 1903, is not a criminal prosecution but a civil suit is in accord with the holding of this Court, in *National Cotton Oil Company v. Texas, supra,* wherein this Court having under consideration the Texas statute containing provisions identical with those in section 2 of the Act of 1903, among other things, said: (197 U. S., p. 133): *"Granting it would exist, the case at bar is not a criminal prosecution.* It involves only the anti-trust laws and their prohibitions and penalties."

In *Waters Pierce Oil Company v. State* (19 Tex. Civil Appeals), affirmed by this Court in *Waters Pierce Oil Co. v. Tex.,* 177 U. S., p. 28, it was held that, an

action to forfeit the permit of a corporation to do business in the State is a civil controversy, and the charge need not be proven beyond a reasonable doubt.

Moreover, we submit that we know of no authority or principle upon which it can be claimed that any defendant in any court has a fundamental, inherent and inalienable right to have a charge proven against him, or it, beyond a reasonable doubt. Further, we respectfully insist that the State of Tennessee, having full power and authority to pass an Act, regulating and controlling intrastate commerce, within her borders, is vested with equal power and authority to provide proceedings to enforce the same and, keeping within constitutional limitations, may provide its own method of procedure and determine the methods and means by which such laws may be effectual.

*Waters Pierce Oil Company v. Texas.* (October term, 1908.)

In *West v. Louisiana*, 194 U. S., pp. 258, 263, this Court, quoting from *Brown v. New Jersey*, *supra*, among other things, said:

> "The State is not tied down by any provision of the Federal Constitution to the practice and procedure which existed at the common law. Subject to the limitations heretofore named, it may avail itself of the wisdom gathered by the experience of the century to make such changes as may be necessary. For instance, while at the common law an indictment by the grand jury was an essen-

tial preliminary to trial for felony, it is within the power of a State to abolish the grand jury entirely and proceed by information.

"The limit of the full control which the State has in the proceedings of its courts, both in civil and criminal cases, is subject only to the qualification that such procedure must not work a denial of fundamental rights or conflict with specific and applicable provisions of the Federal Constitution." (194 U. S., p. 263.)

In *Leeper v. Texas*, 139 U. S., pp. 462-468, this Court, speaking through Mr. Chief Justice Fuller, said:

"Law in its regular course of administration through courts of justice is due process; and when secured by the law of the State, the constitutional requirement is satisfied."

In *Iowa Central Railroad Co. v. Iowa*, 160 U. S., p. 389, 393, this Court, speaking through Mr. Justice White, said:

"It is clear that the fourteenth amendment in no way undertakes to control the power of a State to determine by what process legal rights may be asserted or legal obligations be enforced, provided the method of procedure adopted for these purposes gives reasonable notice and affords fair opportunity to be heard before the issues are decided."

In *Louisville, etc., Co. v. Schmidt*, 177 U. S., p. 236, this Court, speaking through Mr. Justice White, said:

> "It is no longer open to contention that the due process clause of the fourteenth amendment to the Constitution of the United States does not control mere forms of procedure in State Courts or regulate practice therein. All its requirements are complied with, provided in the proceedings which are claimed not to have been due process of law the person condemned has had sufficient notice and adequate opportunity has been afforded him to defend."

In *Hooker v. Los Angeles*, 188 U. S., pp. 314-318, this Court said:

> "The fourteenth amendment does not control the power of the State to determine the form of procedure by which legal rights may be ascertained, if the method adopted gives reasonable notice and affords fair opportunity to be heard."

In *Rogers v. Peck*, 199 U. S., p. 425, this Court, reviewing the judgment of the Supreme Court of Vermont in a capital case said:

> "Due process of law guaranteed by the fourteenth amendment of the Constitution does not require a State to adopt any particular form of procedure so long as it appears that the accused has had sufficient notice of the accusation and adequate opportunity to defend himself in the prosecution."

To the same effect are *Rawlins v. Ga.*, 201 U. S., p. 638; *Felts v. Murphy*, 201 U. S., 123, and numerous other cases cited in the opinion of this Court in Twining's case, 211 U. S., p. 78.

In *Hager v. Reclamation District*, 111 U. S., p. 701, this Court, recognizing the impossibility of giving a general definition prescribing what would be, or would not be "due process of law," said in substance, that this phrase meant that the ordinary mode prescribed by law "appropriate to the case and just to the parties affected"—and "adapted to the end to be attained," was due process of law.

And in *Northern Securities Companies v. United States*, U. S., 193, p. 197, 360, this Court, in enforcing the Federal Anti-Trust Act, which also contained provisions for criminal prosecutions, held that the Federal Courts have power, under section 4 of said Federal Anti-Trust Act *by a suit in equity* to prevent and restrain violations of the act and may mould its decree so as to accomplish practical results, such as law and justice demand. And, in this case, it was in effect held that the proceeding by bill in equity is the only practical remedy to reach the evil sought to be prohibited in such cases.

Now as to the claim of plaintiff in error that it was denied the equal protection of the law, that is, that it was discriminated against by being put to trial under a bill in equity according to the practice of courts of equity and thus denied a trial by a jury, or the right of the statute of limitations.

The contention is that in respect to these matters the plaintiff in error was unreasonably and capriciously discriminated against.

In *Magoun v. Illinois Trust and Savings Bank*, 179 U. S., p. 283, this Court, in passing upon the question presented under that clause of the fourteenth amendment, which prohibits the State from denying to any citizen the equal protection of the laws, said:

> "What satisfies this equality has not been, and probably never can, be defined. Generally, it has been said that it 'only requires the same means to be applied impartially to all the constituents of a class, so that the law shall operate equally and uniformly upon all persons in similar circumstances.'"

Further the Court said:

> "There is . . . no precise application of the rule of reasonableness of classification, and the rule of equality permits many practical inequalities. . . . It only requires that the law shall operate on all alike under the same circumstances."

In *Orient Insurance Company v. Daggs*, 172 U. S., p. 557, this Court, citing the case of *Magoun v. Ill. Trust and Banking Co., supra*, said:

> "We said in that case that the State may distinguish, select and classify objects of legislation, and necessarily the power must have a wide range

> of discretion. And this because of the function of legislation and the purposes to which it is addressed. Classification for such purposes is not invalid because not depending on scientific or marked differences in things or persons or in their relations. It suffices if it is practical, and is not reviewable *unless palpably arbitrary.*" (172 U. S., p. 562.)

In *Hager v. Missouri*, 120 U. S., p. 68, this Court held that the statute giving to the State in cities of certain population more challenges than were accorded to a State elsewhere did not deny the equal protection of the law.

In *Missouri v. Lewis*, 101 U. S., 22, approved in *Maxwell v. Dow*, 176 U. S., pp. 598, 599, this Court held that the clause of the fourteenth amendment, which prohibits a State from denying the equal protection of the laws, does not thereby prohibit the State from prescribing the jurisdiction of its several courts either as to their territorial limits or the subject-matter, or the amount or finality of their respective judgments or decrees; that a State might establish one system of law in one portion of its territory and another in another, provided it did not encroach upon the proper jurisdiction of the United States, nor abridge the privileges or immunities of citizens of the United States, nor deny to any person within its jurisdiction the equal protection of the laws in the same district, nor deprive him of his rights without due process of law.

Can it be contended that the action of the State in providing a remedy against corporations—and it must be borne in mind that the remedy applies both to domestic and foreign corporations—"appropriate to the case" and "adapted to the end to be attained" (*Hager v. Reclamation District, supra*), different from the method of procedure against natural persons was *a palpably arbitrary classification* or discrimination?

We think the answer to this question is to be found in the vital difference between corporations and natural persons. A corporation cannot be imprisoned—the only method of procedure "appropriate to the case"—"adapted to the end to be attained"—that is, to prohibit it from carrying on its business, is through the injunction process of a court of equity. An injunction issuing out of a criminal court is a thing unknown to the laws.

Responding to the claim made by plaintiff in error that the proceeding deprived it of its property by due process of law and denied to it the equal protection of the law, the Supreme Court of Tennessee, among other things, said:

> "Now, was it competent for the Legislature to provide a civil remedy against corporations and a criminal remedy against natural persons? Is there any good reason for the discrimination? It seems that there is a good reason in fact that it is impossible to punish such corporations by imprisonment, a kind of punishment which can be inflicted only upon natural persons. Again, the

deprivation of business, or charter rights, or the deprivation of the power to exercise business or charter rights within the State through a judgment of ouster, is a legal consequence which cannot be inflicted upon natural persons in the very nature of things, because wholly inapplicable to them. The argument of the defendant is in substance that inasmuch as natural persons may be consigned to the penitentiary under this act by a criminal prosecution, therefore if ousted at all from the State, a corporation should be ousted by the same sort of a prosecution. This seems to us a *non sequitur*. The punishment inflicted upon the corporation is one peculiar to corporations, and is inflicted in the same manner in which this form of correction has been applied to corporations ever since there has been any public redress at all in this State for corporate wrongs, and is the same, in substance, which has been applied by English-speaking people for a time beyond which the memory of man runneth not to the contrary.

"The defendant insists that it should have been indicted. To what purpose? To suffer in a criminal case a judgment which has for ages been held appropriate only in civil controversies. Has the defendant a right to complain because it was sued in equity instead of indicted in the criminal court? Why should it have been indicted? It could not have been imprisoned, and no fine was authorized against it. If the statute had declared a fine against it, an indictment would have been proper; or if the Act had simply declared unlawful the things it denounced, there might still have been an indictment, as for a misdemeanor; but having declared in terms the legal consequences of a breach of the legal inhibition, there could be

no indictment. But the defendant says the legal consequences of the breach I am to have imposed upon me, and am to suffer through the machinery of a court of equity, where I cannot have the benefit of the reasonable doubt, or the benefit of the statute of limitations which the sovereign concedes in criminal cases, but does not in its own suits in civil courts, and I am also deprived of the right to a general verdict of guilty, or not guilty, according to the course of practice in criminal courts. But suppose we turn the case about, and consider what a natural person might say. He complains: I am subjected to the humiliation of an indictment for a felony, and if convicted I may be sent to the penitentiary for a term of years, while a corporation that does the same thing is subjected merely to the loss of a civil power, the right to do business; while I am subjected to the humiliation of the criminal court, a corporation for the same act enjoys the benign principles that are administered in a court of equity. Is not the case of the natural person as strong in the matter of discrimination as that of the corporation? What then? Is it true that for the same breach of duty a corporation and a citizen must both be indicted? Although, owing to the differing natures of the natural person the same punishment cannot be inflicted? Although it is impossible to reach the same end as to both by the same means? Although as to the natural person it may result in imprisonment in the penitentiary for ten years, and as to the corporation only in a fine or money judgment? Would there be no inequality in that result? But will it be said that the Legislature might have authorized an indictment and annexed as punishment the forfeiture of corporate franchises in case of domestic

corporations? If so, there would have been converted into a criminal sentence a judgment which has been, from time immemorial, held to be but a civil determination. Shall all these hoary precedents be overturned to attain a state of harmony with an abstract theory? The true theory is that corporations and natural persons are so diverse in some respects that there is no basis or common ground of comparison, but a necessity of simple antithesis. And such is the particular aspect in which they are presented in the present litigation." (Record, pp. 522, 523.)

*As to the Statute of Limitations.*

Further as to the claim of plaintiff in error that it had the right to plead the statute of limitations, we submit:

First: This is a civil action, and under the Code of Tennessee (Shannon's Code, section 4453, Rec., p. 523), no statute of limitations is applicable thereto as against the State.

Second: The Supreme Court of Tennessee held (Rec., pp. 523, 524), that the offense denounced by section 3 of the Act of 1903 is a felony of such grade and punishment that no statute of limitations applies thereto. Therefore, plaintiff in error has not been deprived of any right.

It is well settled that the construction and effect given by the Supreme Court of the State to the statute of limitations enacted by the State Legislature is not subject to re-examination by this Court under a writ of error to the State Court.

*Harbinger v. Myer*, 92 U. S., 111.
*McStacy et al. v. Friedman*, 92 U. S., 723.

## CONCLUSION.

Now, in conclusion, we submit to your honors this record of the Supreme Court of Tennessee, showing a proceeding against the plaintiff in error according to the long and approved forms and course of procedure, recognized by Courts from time immemorial—a bill or complaint of which the plaintiff in error had due notice and an opportunity to challenge, as it did—a bill or complaint adjudged sufficient in law by the Courts of Tennessee, and thereupon, full opportunity given to plaintiff in error to answer and set up all defenses which might, under the law, avail it—that under the issues thus made up under the complaint and the answer thereto, an opportunity was given to take proof and full proof taken by the defendant—that under the statute of Tennessee, plaintiff in error had the right to submit to a jury each and every disputed question of fact involved in the case, but it did not see fit to invoke or avail itself of this right—that after an opportunity to be heard and a full hearing upon the issues and the proof, the Courts of Tennessee adjudged and decreed that plaintiff in error had violated the law and for-

feited its right to continue in business within the borders of said State; so that, this judgment of ouster having been pronounced only after notice and an opportunity to be heard—and a full hearing according to the law of the land—and under the same law applicable to all other corporations in like condition with plaintiff in error, we respectfully insist that there is no merit whatsoever in the claim of plaintiff in error that a Federal question is involved in this record, and therefore the writ of error should be dismissed and the judgment of the Supreme Court of Tennessee should be affirmed.

Respectfully submitted,

CHARLES T. CATES, JR.,
*Attorney General.*

## APPENDIX A.

### ACTS OF 1903, CHAPTER 140.

An Act to declare unlawful and void all arrangements and contracts, agreements, trusts, or combinations made with a view to lessen or which tend to lessen free competition in the importation or sale of articles imported into this State; or in the manufacture or sale of articles of domestic growth or of raw material; to declare unlawful and void all arrangements, contracts, agreements, trusts or combinations between persons or corporations designed, or which tend to advance, reduce or control the price of such product or article to producer or consumer of any such product or article; to provide for forfeiture of the charter and franchise of any corporation, organized under the laws of this State, violating any of the provisions of this Act; to prohibit every foreign corporation violating any of the provisions of this Act from doing business in this State; to require the Attorney-General of this State to institute legal proceedings against any such corporations violating the provisions of this Act, and to enforce the penalties prescribed; to prescribe penalties for any violation of this Act; to authorize any person or corporation damaged by any such trust, agreement or combination to sue for the recovery of such damages, and for other purposes.

*Section* 1. Be it enacted by the General Assembly of the State of Tennessee, and it is hereby enacted by the authority of the same, That from and after the passage of this Act all arrangements, contracts, agreements, trusts or combinations between persons or corporations made with a view to lessen, or which tend to lessen full and free competition in the importation or sale of articles imported into this State, or in the manufacture or sale of articles of domestic growth or of do-

mestic raw material, and all arrangements, contracts, agreements, trusts or combinations between persons or corporations designed, or which tend to advance, reduce or control the price or the cost to the producer or the consumer of any such product or article, are hereby declared to be against public policy, unlawful and void.

*Section* 2. Be it further enacted, That any corporation chartered under the laws of the State which shall violate any of the provisions of this Act shall thereby forfeit its charter and its franchise and its corporate existence shall thereupon cease and determine. Every foreign corporation which shall violate any of the provisions of this Act is hereby denied the right to do, and is prohibited from doing business in this State. It is hereby made the duty of the Attorney-General of this State to enforce these provisions by due process of law.

*Section* 3. Be it further enacted, That any violation of the provisions of this Act shall be deemed, and is hereby declared to be destructive of full and free competition and a conspiracy against trade, and any person or persons who may engage in any such conspiracy or who shall, as principal manager, director or agent, or in any other capacity, knowingly carry out any of the stipulations, purposes, prices, rates or orders made in furtherance of such conspiracy, shall upon conviction be punished by a fine of not less than one hundred dollars or more than five thousand dollars, and by imprisonment in the penitentiary not less than

one year nor more than ten years; or in the judgment of the Court, by either such fine or imprisonment.

*Section* 4. Be it further enacted, That any person or persons or corporation that may be injured or damaged by any such arrangement, contract, agreement, trust or combination, described in Section 1 of this Act, may sue for and recover in any court of competent jurisdiction in this State of any person or persons or corporations operating such trusts or combination, the full consideration or sum paid by him or them of any goods, wares, merchandise or articles, the sale of which is controlled by such combination or trust.

*Section* 5. Be it further enacted, That it shall be the duty of the Judge of the Circuit and Criminal Courts of this State specially to instruct grand juries as to the provisions of this Act.

*Section* 6. Be it further enacted That all laws and parts of laws in conflict with the provisions of this Act be and the same are hereby repealed.

*Section* 7. Be it further enacted, That this Act take effect from and after its passage, the public welfare requiring it.

Passed March 16, 1903.

L. D. TYSON,
Speaker of the House of Representatives.

ED T. SEAY,
Speaker of the Senate.

Approved March 23, 1903.

JAMES B. FRASIER,
Governor.

## APPENDIX B.

### ACTS OF 1891, CHAPTER 122.

An Act to amend Chapter 31 of the Acts of 1877, declaring the terms on which foreign corporations organized for mining or manufacturing purposes may carry on their business and purchase, hold and convey real and personal property in this State, so as to make the provisions of said Act apply to all foreign corporations that may desire to own property or to do business in this State.

*Section* 1. Be it enacted by the General Assembly of the State of Tennessee, That Chapter 31 of the Acts of 1877 be so amended and enlarged as that the provisions of said Act shall apply to all corporations chartered or organized under the laws of other States or counties for any purpose whatsoever which may desire to do any kind of business in this State.

*Section* 2. Be it further enacted, That each and every corporation created or organized under or by virtue of any government other than that of this State, for any purpose whatever, desiring to own property or carry on business in this State of any kind or character, shall first file in the office of the Secretary of the State a copy of its charter and cause an abstract of same to be recorded in the office of the Register in each county in which such corporation desires or proposes to carry on its business or to acquire or own property, as now required by Section 2 of Chapter 31 of Acts of 1877.

*Section* 3. Be it further enacted, That it shall be unlawful for any foreign corporation to do or attempt to do any business or to own or to acquire any property in this State without having first complied with the provisions of this Act, and a violation of this statute shall subject the offender to a fine of not less than $100.00 nor more than $500.00, at the discretion of the jury trying the case.

*Section* 4. Be it further enacted, That when a corporation complies with the provisions of this Act it shall then be, to all intents and purposes, a domestic corporation, and may sue and be sued in the courts of this State and subject to the jurisdiction of the courts of this State just as though it were created under the laws of this State.

*Section* 5. Be it further enacted, That when such corporation has no agent in this State upon whom process may be served by any person bringing suit against such corporation, then it may be proceeded against by an attachment to be levied upon any property owned by the corporation, and publication, as in other attachment cases. But for the plaintiff to obtain an attachment he, his agent or attorney, need only make oath of the justness of his claim, that the defendant is a corporation organized under this Act, and that it has no agent in the county where the property sought to be attached is situated upon whom process can be served.

*Section* 6. Be it further enacted, That said Chapter

31 of the Acts of 1877, except in so far as the same is amended, enlarged and extended by this Act, be and the same is declared to be in full force.

*Section* 7. Be it further enacted, That this Act take effect from and after its passage, the public welfare requiring it.

Passed March 21, 1891.

THOMAS R. MYERS,
Speaker of the House of Representatives.
W. C. DISMUKES,
Speaker of the Senate.

Approved March 26, 1891.

JOHN P. BUCHANAN,
Governor.

## APPENDIX C.

### Acts of 1889, Chapter 250.

An Act to prevent conspiracies and formations of trusts against legitimate trade and commerce, and to suppress illegal combinations against the same.

*Section* 1. Be it enacted by the General Assembly of the State of Tennessee, That it shall not be lawful for any person or persons, or associations of persons, or any corporation in this State, *or doing business in this State*, to form, or agree to, or to conspire to form any trust, pool, or corner or combination, or any other arrangement or device, in or about any article of legitimate traffic, the production or manufacture or sale of such article that may injuriously affect, and for the purpose of injuriously affecting the legitimate trade and commerce of the county, or to limit the supply or production of said articles, whereby the price of such produce or manufactured articles, or other articles of legitimate trade may be unduly depressed and put down, or unduly raised or increased, for the purpose of speculation, either by pooling or purchasing said articles for the purpose of withdrawing them from market to destroy legitimate competition, or to create a monopoly or corner in the same, or to produce an undue demand for the same, and that to unduly raise the price of said articles, or by throwing the same on the market when so accumulated or purchased for the purpose of creating an undue depression in the price of such article, and by such means to destroy or limit legiti-

mate competition in the production, manufacture or sale of such articles, as by any other device or arrangement for such purpose. All such agreements, trusts, pools, corners and combinations are hereby prohibited; prvided nothing herein contained shall be construed to prevent or interfere with parties engaged in legitimate trade and speculation.

*Section* 2. Be it further enacted, That any person or persons or *corporation* violating the first section of this Act, for the first offense, shall, on conviction, pay a fine of not less than two hundred and fifty dollars, and for the second offense a fine of not less than five hundred dollars, and the Attorney-General, for each conviction, shall have a taxed fee of fifty dollars, and shall have, in addition, fifty per cent of the money actually received on such fines, and he shall prosecute all such cases, ex officio, without any other prosecutor, and the Courts shall give this Act in charge and the grand jury shall have full inquisitorial power in such cases.

*Section* 3. Be it further enacted, That no contract made by any person or persons or incorporations, whereby to carry out, or agree to carry out, any of the agreements or combinations enumerated in and prohibited in the foregoing act, shall be enforced in any of the courts of this State whether the same be made by citizens of this State or any other State.

*Section* 4. Be it further enacted, That any corporation created or incorporated by or under the laws of

this State, which violates any provisions of this act, shall thereby forfeit its corporate rights and franchises, and its corporate existence shall thereupon cease and determine, and it shall be the duty of the Attorneys-General of the State, of their own motion and without leave of order of any court or judge, to institute an action in behalf of the people and in the name of the State for the forfeiture of such rights and franchises, and the dissolution of such corporate existence, or any citizen of the State may institute such suit by proceedings in a Court of Chancery in the name of the State, and said corporations may be enjoined from violation of this act, pending such proceedings, provided such citizen may not begin such proceedings without giving security for cost in such cases.

Passed April 4, 1889.

W. L. CLAPP,
Speaker of the House of Representatives.

BENJ. J. LEA,
Speaker of the Senate.

Approved April 6, 1889.

ROBERT L. TAYLOR,
Governor.